

REMARKS

Claims 1-19 are pending in the present application.

Favorable reconsideration and allowance of the claims is solicited in view of the following remarks.

The rejection of Claims 1-10 and 17-19 under 35 U.S.C. §103 over Empie et al (U.S. 6,261,565) is traversed.

Empie et al disclose compositions extracted from vegetable matter and more particularly to phytochemicals, including saponogenins and saponins, lignans, phenolic acids, catechins and isoflavones, and especially those extracted from a family of plants including soy, flax, tea, and cocoa and methods of using these compositions as nutritional supplements or food additives (column 1, lines 11-17). Empie et al further disclose that their composition is preferably enriched in two or more isoflavones, lignans, saponins, catechins, and phenolic acids (see Abstract). However, Empie et al do not provide any reasonable motivation for a composition containing (a) ferulic acid *and* (b) caffeic acid and/or chlorogenic acid, or the advantages flowing therefrom.

The Examiner's attention is directed to column 2, lines 3-6 of Empie et al, which disclose that the bioactive compounds may be selected from flavonoids, isoflavones, saponins, lignans, alkaloids, catechins, and phenolic acids. In addition, from column 2, line 56 through column 3, line 30, Empie et al define these generic groups to include an indeterminable number of species. Moreover, Applicants note that Empie et al do not provide any Examples specifically disclosing the use of (a) ferulic acid and (b) caffeic acid and/or chlorogenic acid. Therefore, the skilled artisan would not have any direction to select ferulic acid, caffeic acid, or chlorogenic acid, in any combination, to attain the therapeutic benefits of the present invention (please refer to the Examples of the present invention, in particular Example 1, Table 1 (pages 12-15) and Example 2, Table 2 (pages 16-18)).

Moreover, Applicants note that the claims of Empie et al effectively *teach away* from the present invention. In particular, Applicants note that Claim 1 provides a composition that is enriched in “a first phytochemical and a second phytochemical selected from the group consisting of isoflavones, lignans, saponins, catechins and phenolic acids, said second phytochemical being a member of the group which is *different* from said first phytochemical.” Based on this disclosure, it would be apparent to the skilled artisan that Empie et al do not suggest a composition containing (a) ferulic acid and (b) caffeic acid and/or chlorogenic acid, since each of these are phenolic acids, but rather teach that undesirability of such a combination.

Accordingly, the disclosure of Empie et al can not even support a *prima facie* case of obviousness. Therefore, Applicants request withdrawal of this ground of rejection.

The rejection of Claims 1-6, 8, and 11-16 under 35 U.S.C. §103 over Tanabe et al (U.S. 5,932,623) is traversed.

Tanabe et al disclose a fruit polyphenol; a process for production thereof; and an antioxidant, a hypotensive agent, an antimutagenic agent, an antiallergic agent and an anticariogenic agent each comprising said polyphenol as an effective component (column 1, lines 10-14). Tanabe et al further disclose the fruit polyphenol is composed mostly of (1) simple polyphenol compounds such as caffeic acid derivatives, p-coumaric acid derivatives, flavan-3-ols (catechins), flavonols (quercetin glycosides), dihydrochalcones (phloretin glycosides) and the like and (2) high-molecular polyphenol compounds such as condensed tannins and the like (column 4, lines 34-41).

However, at no point do Tanabe et al disclose or suggest any composition containing ferulic acid, much less a composition containing a mixture of ferulic acid with caffeic acid and/or chlorogenic acid, or the advantages flowing from the inventive composition (see Example 1 and Table 1 at pages 14-15). Citing In re Royka, 490 F.2d 981, 180 USPQ 580

(CCPA 1974), MPEP §2143.03 states: “To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” Applicants submit that the disclosure of Tanabe et al fails to meet this requirement, and as such this reference fails to render the present invention obvious.

Withdrawal of this ground of rejection is requested.

The rejection of Claims 1, 6, 8, and 14 under 35 U.S.C. §112, second paragraph, is obviated by amendment. Applicants respectfully request withdrawal of this ground of rejection.

Applicants respectfully request that the obviousness-type double patenting rejections of Claims 1, 6, and 8-17 over U.S. 6,310,100 and of Claims 1-19 over U.S. 2002/0054923 be held in abeyance until an indication of allowable subject matter in the present application. If necessary, a terminal disclaimer will be filed at that time.

In addition, Applicants note that the Examiner has also issued an obviousness-type double patenting rejection of Claims 1-19 over EP 1186297, EP 1186294, and EP 1090635 (paper number 6, page 3, lines 13-18). However, Applicants submit that this rejection is improper, as obviousness-type double patenting is only applicable when the basis for the rejection is another U.S. application, published application, or patent. MPEP §804 states: “Double patenting does not relate to international applications which have not yet entered the national stage in the United States.” Therefore, no further action is with respect to these references is believed to be necessary.

Applicants submit that the present application is now in condition for allowance.

Early notification of such action is earnestly solicited.

Respectfully submitted,

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IN THE CLAIMS

Please amend the claims as follows:

1. (Amended) A composition comprising:

(a) ferulic acid or an ester thereof, or a pharmaceutically acceptable salt thereof, and

(b) caffeic acid [and/or a], chlorogenic acid, caffeic acid and chlorogenic acid, or [a]

pharmaceutically acceptable [salt] salts thereof.

6. (Amended) A food or beverage comprising:

(a) ferulic acid or an ester thereof, or a pharmaceutically acceptable salt thereof, and

(b) caffeic acid [and/or a], chlorogenic acid, caffeic acid and chlorogenic acid, or [a]

pharmaceutically acceptable [salt] salts thereof.

8. (Amended) A supplement comprising

(a) ferulic acid or an ester thereof, or a pharmaceutically acceptable salt thereof, and

(b) caffeic acid [and/or a], chlorogenic acid, caffeic acid and chlorogenic acid, or

pharmaceutically acceptable salts thereof.

11. (Amended) A process for preventing or treating hypertension or high blood pressure comprising: administering an effective dose of a composition comprising (a) ferulic acid or an ester thereof, or a pharmaceutically acceptable salt thereof, and (b) a component selected from caffeic acid [and/or a], chlorogenic acid, caffeic acid and chlorogenic acid, [or a] and pharmaceutically acceptable [salt] salts thereof, to a subject in need thereof.

14. (Amended) A method for reducing a rise in blood pressure comprising administering an effective dosage of a composition comprising: (a) ferulic acid or an ester

thereof, or a pharmaceutically acceptable salt thereof, and (b) a component selected from caffeic acid [and/or a], chlorogenic acid, caffeic acid and chlorogenic acid, [or a] and pharmaceutically acceptable [salt] salts thereof, to a subject in need thereof.